IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

LA.App..No. 584 of 2006 & C.O.52/07

LAR.82/2001 of SUB COURT, KASARAGOD
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APPELLANT: RESPONDENT:

THE STATE OF KERALA.

BY GOVERNMENT PLEADER SMT.LATHA T.THANKAPPAN.

RESPONDENTS: CLAIMANT:
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1. C. MOHAMMED SHAFI, S/O.MOIDU HAJI,
CHEMPARIKKA, CHANDRAGIRI P.O., KALNADU VILLAGE.

2. THE MANAGING DIRECTOR,
BAKAL RESORTS DEVELOPMENT CORPORATION, KASARAGOD.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, ALONG WITH C.O.52/07 & LAA 1094/07 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.3589/06 IN L.A.A. NO. 584/06

DISMISSED

5.12.2007. SD/- KURIAN JOSEPH, JUDGE.

SD/- HARUN-UL-RASHID, JUDGE.

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.Nos.584/2006 & Cross Objection 52/2007, 1094 & 1230/2007

Dated this the 5th day of December, 2007

JUDGMENT

Kurian Joseph,J.

These are appeals filed by the State aggrieved by the fixation of land value by the reference court-Sub Court, Kasargod. The acquisition is for Bakel Tourism Project. The Land Acquisition Officer fixed the land value at Rs.5076/- per cent. The main contention of the learned Government Pleader is that despite the report of the Advocate Commissioner wherein the value is to be fixed at Rs.8500/- per cent, the reference court has fixed the land value at Rs.10,000/- per cent. Learned counsel appearing for the Cross-objector on the other hand, submits that going by the stand taken by the reference court itself, they are entitled to get land value to the tune of Rs.20,000/- per cent, though they have limited their claim for the purpose of court fee to Rs.15,000/- per cent. On going through the judgment of the reference court, the only basis for fixation of land value at Rs.10,000/- is that in some cases the Land Acquisition Officer had awarded land value at Rs.11,000/- and Rs.20,000/-. To quote from paragraph 28 of the judgment:-

"28. The Commissioner at paragraph 30 of the

> report assessed the market value for the acquired properties on the basis of improvements. I do not find any irregularity or mistake in the assessment made by the Commissioner in this regard. On the basis of the improvements, the Commissioner came to the conclusion that the market value of the properties of the subject matter of these L.A.Rs can be fixed at Rs.8,500/-. The Commissioner also verified the awards produced by the claimants before this Court. It is evident from the documents produced by the claimant that the Acquisition Officer has awarded compensation for a sum of Rs.6,000/-, Rs.11,000/-, and Rs.20,000/- for the lands acquired for the same purpose. Hence from the above discussion I am of opinion that awarding compensation of Rs.10,000/- as the value of land per cent as compensation will meet the ends of justice. Since the properties situated in all the above L.A.Rs adjacently all the claimants are entitled to get the centage value at the rate of Rs.10,000/- per cent. Hence these points are answered accordingly."

We do not find any ground to sustain the judgment on the reasoning adopted by the reference court. Unless the acquired properties referred to by the reference court are similar and comparable to the acquired properties covered by the judgment under appeal, there is no point in arbitrarily fixing the land value at Rs.10,000/-. The land value fixed is actually the market value of the property as on the date of Section 4(1) notification. If as a matter of fact in a similar and comparable case the land value has become final to the extent referred to by the reference court or more, there cannot be any objection in granting the said value to the claimants. But what is

crucial is the evidence regarding similarity and comparability. Learned counsel for the claimants prays for an opportunity before the reference court. Therefore, we set aside the judgment and decree and remit the matter to the reference court for fresh consideration in accordance with law. The parties will be at liberty to adduce fresh evidence. The parties shall appear before the reference court on 11-1-2008. The reference court shall dispose of the matter within another four months.

In view of the remand as above, the cross objectors shall be entitled to refund of the court fee paid.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

ahg.

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A.Nos.584/2006 &
Cross Objection 52/2007,
1094 & 1230/2007

JUDGMENT

5th December, 2007